indebtedness, leaving a balance of about $15,000 still secured by the mortgage. The mortgagor was adjudicated bankrupt within two weeks of this application of the insurance money on the unsecured indebtedness, and its trustee in bankruptcy sues the defendant company to recover the $15,000 as a preference. *Held,* that the transaction was equivalent to a turning over of the money by the mortgage trustee to the mortgagor and a payment of it by the mortgagor to the mortgage creditor, and the amount was therefore recoverable as a preference. *Stearns Salt & Lumber Co.* v. *Hammond* (C. C. A. 6th Circuit, 1914), 217 Fed. 559.

The court refused to concede that the policies in question insured the mortgagee's interest exclusively, but took the view that inasmuch as the insurance was taken by virtue of the mortgage provision and at the expense of the mortgagor, the latter was entitled to its benefits to the extent of having its proceeds applied *pro tanto* to the liquidation of the mortgage debt, and equitably, at least, was entitled to whatever was collected above the amount necessary or desired to satisfy the claims of the mortgagee thereto; waiver by defendant of its paramount legal claim to the insurance money vested in the bankrupt absolute title and property therein, and the subsequent application of the portion now sought to be recovered to the defendant's unsecured claims was obviously a depletion of the bankrupt's estate to the advantage of a creditor. The conjunction of these two elements amounts to a preference. *New York County Nat. Bank* v. *Massey,* 192 U. S. 138, 147; *Newport Bank* v. *Herkimer,* 225 U. S. 178; *Continental & Commercial Trust & Savings Bank* v. *Chicago Title & Trust Co.,* 229 U. S. 435; *Dalrymple* v. *Hillenbrand,* 62 N. Y. 5, 11; *Claridge* v. *Evans,* 137 Wis. 218, 225; *In re Kerlin,* 209 Fed. 42, 44. But no preference results by a taking on the part of the creditor unless it be by virtue of a disposition by the insolvent debtor of his property for the creditor's benefit. *Western Tie & Timber Co.* v. *Brown,* 196 U. S. 502; *Rector* v. *City Deposit Bank,* 200 U. S. 405, 420. Here the bankrupt's consent to the application of the funds to the unsecured debt of the defendant is considered as such a "disposition."

CARRIERS—RIGHT OF PASSENGERS TO EQUAL FACILITIES.—The legislature of the State of Oklahoma passed in 1907 a law known as the "Separate Coach Law," which provided among other things that railroad companies doing business within the State should provide separate coaches and waiting rooms with equal facilities for negroes and white people; but further provided that the act should not be construed as preventing railroad companies "from hauling sleeping cars, dining cars, or chair cars, to be used exclusively by either white or negro passengers separately, but not jointly." *Held,* (1), That it was not an infraction of the Fourteenth Amendment to the United States Constitution for a State to require separate but equal accommodations for the two races; (2) but that the section relating to sleeping cars and dining cars was unconstitutional and void, in that it enabled the railroad companies, by authority of the State, to deprive a certain class of travellers of a constitutional right, the right to substantial equality of treatment when travelling under like conditions; further, that the discrimination could not

be sustained on the ground that it was based upon the volume of business furnished by a particular class of persons. *McCabe, et al.* v. *Atchison, etc. Ry. Co., et al.* (1914), 35 Sup. Ct. 69.

This case follows the leading case of *Plessy* v. *Ferguson,* 163 U. S. 537, in holding that the "equality right" secured to all citizens by the "equal protection of the law" clause of the Fourteenth Amendment, is not a joint or common enjoyment of the right, but that if a statute providing for separation of passengers requires a railway company to furnish equal accommodations, without discrimination, to all travelling under like conditions, then it does not contravene this section of the Constitution. The following cases also sustain this view: *Anderson* v. *Louisville, etc. R. Co.,* 62 Fed. 46; *Ohio Valley R. Co.* v. *Lander,* 104 Ky. 431; *Morrison* v. *State,* 116 Tenn. 534; *C. & N. W. R. Co.* v. *Williams,* 55 Ill. 185. Independent of any statutory authority, a carrier may adopt rules and regulations requiring colored persons, solely because of their color, to occupy apartments or coaches set apart for those of their race, on the ground that the duty of the carrier extends to equality, not identity or community of accommodation. *Chilton* v. *St. Louis, etc. R. Co.,* 114 Mo. 88; *Westchester, etc. R. Co.* v. *Mills,* 55 Pa. 209; *Chesapeake, etc. R. Co.* v. *Chiles,* 125 Ky. 299. In all cases the right of the carrier to separate the two classes of passengers has the condition attached that the accommodations furnished shall be equal in every respect. Therefore, aside from statutory regulation, if the rules of the carrier subject colored passengers to unjust discriminations, such regulations have been declared by the courts to be unreasonable and void. *Coger* v. *N. W. Union Packet Co.,* 37 Iowa 145; *The Sue,* 22 Fed. 843. Upon examination of the cases sustaining the right of the legislature to pass "separation acts," it will be seen that the majority of them hold that there is a proviso attached to the effect that such statute must insure to all concerned, equal treatment in every respect, and that any law authorizing railroad companies to violate their common law duty to the public would be unconstitutional and void. The principal case affirmatively establishes that proposition.

CONTRACTS — CONSTRUCTION. — Defendant had purchased a cemetery lot from plaintiff lodge, the ownership of which was evidenced by a certificate signed by both parties, whereby defendant obtained the lot for burial purposes for a certain price and agreed to conform to all of the rules and regulations of the association, and also to any amendments thereto. At the time of the purchase one of the rules was that all lots should be taken care of by a servant of the plaintiff lodge at a price of $1.50 per year. Several years later this rule was changed so that the price was increased to $2.00 per year. Defendant refused to pay the increase, and was sued. *Held,* (FARRINGTON, J. dissenting) that there was no express contract to pay, and that there could be no implied contract found. *Monett Lodge No. 106, I. O. O. F.* v. *Hartman* (Mo. App. 1914), 170 S. W., 670.

Neither the prevailing nor dissenting opinion seems to regard the by-law in force at the time of the contract as itself a term in the contract which cannot be changed without assent. The majority of the court, while holding